

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

9/Appeal
Brief(4)

May 18, 1998

In re application of : Barry W. Cummins
Serial No. : 08/611,764
Filed : March 8, 1996
For : ACIDIC COMPOSITION OF MATTER
FOR USE TO DESTROY
MICROORGANISMS
Examiner : Pak, J.
Art Unit : 1209
Our File No. : 9240.3801

Bet
10-16-98

APPELLANT'S BRIEF IN ACCORDANCE WITH 37 CFR 1.192(c)

Appeal from the Primary Examiner,

J. Pak, in and for,

the United States Patent and Trademark Office

Barry L. Haley, Reg. No. 25,339
Malin, Haley, DiMaggio & Crosby, P.A.
One East Broward Boulevard
Suite 1609
Fort Lauderdale, Florida 33301
(954) 763-3303

05/26/1998 AIBRAHIM 00000087 08611764

02 FC:220

155.00 OP

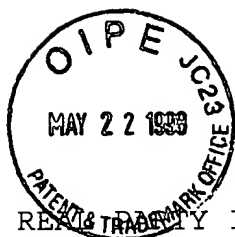


TABLE OF CONTENTS

I.	RELATED ARTS IN INTEREST	1
II.	RELATED APPEALS AND INTERFERENCES	1
III.	STATUS OF CLAIMS	1
IV.	STATUS OF AMENDMENTS	1
V.	SUMMARY OF INVENTION	2
VI.	ISSUES	3
1.	Whether the Examiner erred in rejecting claims 1-5, under 35 U.S.C. § 103 as being unpatentable over Cosby, U.S. Patent No. 3,919,416	3
VII.	GROUPING OF CLAIMS	3
VIII.	ARGUMENT	4
1.	The Examiner erred in rejecting claims 1-5 under 35 U.S.C. § 103 as being unpatentable over Cosby, U.S. Patent No. 3,919,416	4
IX.	APPENDIX	8



I. REAL PARTY IN INTEREST

This invention has not been assigned. The real party in interest is the inventor, Barry W. Cummins.

II. RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1 through 5 are pending in this application. Applicant is appealing the Examiner's final rejections of claims 1-5 under 35 U.S.C. § 103 as being unpatentable over Cosby.

IV. STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the final rejections in the Office Action mailed July 16, 1997, paper no. 5. Claims 1-5 are being appealed in their form as submitted in Applicant's amendment filed March 10, 1997, and finally rejected by the Examiner on July 16, 1997.

V. SUMMARY OF INVENTION

The present invention relates to a composition of matter that is useful for the treatment of killing microorganisms and human skin diseases. It also includes a method of preparing a composition of matter that is useful for the treatment of killing microorganisms and human skin diseases. The composition of matter and the method taught herein comprise a highly effective composition to kill or retard the growth of microorganisms such as bacteria, viruses and other microorganisms. To achieve the invention taught herein, the first basic ingredient of sulfuric acid at 98% purity is placed in a container in a predetermined quantity.

Distilled water is placed in a separate container and heated to approximately 140 degrees fahrenheit at which time 2.77 pounds per gallon of a 27% active ammonium sulfate is added to the water, preferably using a stainless tube to inject air to dissolve the ammonium sulfate in the water. The resulting ammonium sulfate and water, and the sulfuric acid are mixed together simultaneously at the same ratio in a large stainless steel pressure vessel at least 15 psi above atmospheric pressure. The vessel itself also includes positive and negative electrodes for passing a DC current through the mixture as it is filled into the pressure vessel. At least one amp of DC current is maintained approximately a foot above the base of the vessel. The mixture is sprayed into the vessel through sparages.

The temperature of this mixture is raised to approximately 900 degrees fahrenheit and is maintained for 3 to 4 hours. A cooling jacket is required to keep the temperature below 1200 degrees fahrenheit. During the cool down, excess gas is removed. At the end of a cool down period of approximately 4 hours, another 10% by weight of the original mixture is added to act as a stabilizer. The present invention and the method has numerous applications as a bactericide, a fungicide or a viricide or other active acidic cleaning agent at extremely low PH (below 2), while at the same time the composition is not an irritant or deleterious to human cells. The present invention has also been used as a food preservative for preserving foods such as fish for long periods of time for up to two weeks at room temperature.

VI. ISSUES

1. Whether the Examiner erred in rejecting claims 1-5 under 35 U.S.C. § 103 as being unpatentable over Cosby, U.S. Patent No. 3,919,416.

VII. GROUPING OF CLAIMS

Applicant believes, and supports this belief with the argument that follows, that claims 1-4, and 5 are each patentable over the prior art.

VIII. ARGUMENT

1. The Examiner erred in rejecting claims 1-5 under 35 U.S.C. § 103 as being unpatentable over Cosby, U.S. Patent No. 3,919,416.

The determination of obviousness under 35 U.S.C. § 103 requires: 1) a determination of the scope and content of the prior art; 2) ascertaining the differences between the prior art and the claims at issue; 3) resolving the level of ordinary skill in the pertinent art; and 4) evaluating evidence of secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966).

For a *prima facie* case of obviousness to be established by the Examiner: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings; 2) there must be a reasonable expectation of success; and 3) the prior art references must teach or suggest all the claim limitations. *MPEP* §§ 2142-43.

Applicant's claimed invention both as to the composition of matter and the method claim, relates to a very specific composition obtained in very specific step by step ways not remotely suggested in the Cosby reference.

Claim 1 of Applicant's invention requires sulfuric acid in a 1 to 2 volume ratio with distilled water and aluminum sulfate in a ratio of 2.77 pounds per gallon of water. There is no other suggestion of this combination in Cosby. Further, this mixture of sulfuric acid, ammonium sulfate and water is combined in a pressurized vessel that is 15 psi above atmospheric pressure and is heated to 900 degrees fahrenheit.

Finally, after the mixture has been cooled, another 10% of the original mixture is added back into the entire mixture.

Therefore, it is Applicant's position that not only is Applicant's invention novel, it is clearly unobvious by all standards used in practice in that no one reading Cosby would remotely suggest arriving at Applicant's very specific composition and method. The fact is Applicant's invention is a very useful composition that kills microorganisms and certain types of skin diseases without harming human skin. Further, Applicant's invention is useful for preserving foods.

The Cosby reference offers no express or implied motivation or teaching to arrive at Applicant's claimed invention. The chemical elements are not the same except for the ammonium sulfate. The proportions are not suggested, the pressure is not suggested, the heating is not suggested, and, in fact, the entire chemistry, both as to the composition of matter and the method is not suggested. In fact, Cosby even teaches away by teaching a PH of 5.3 which is not done or possible with Applicant's invention. The PH in Applicant's invention is less than 2.

The Examiner states that one having ordinary skill in the art would readily recognize the importance of keeping ammonium sulfate under acidic condition and would have utilize strong acids to achieve acidic condition. The Examiner also believes that proportions and reactions are held within the skill of an ordinary artisan who is a trained chemist.

It is Applicant's position that Applicant's unique and unobvious composition of matter and method to achieve Applicant's invention is not remotely suggested in Cosby which further relates to eradicating boll weevils.

However, prior to determining whether a *prima facie* case has been made by the Examiner, the first issue that must be considered is the scope and content of the prior art. In order to rely on a reference as a basis of rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or be reasonably pertinent to the particular problem with which the inventor was concerned. *E.g., In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992); *MPEP* § 2141.01(a).

There must be some teaching or suggestion in the cited art such that it would have been obvious to one of ordinary skill in the art to make the particular selection and combination made by the patentee. In order to obviate an invention, the prior art must suggest the desirability of making the claimed invention. *Ryko Manufacturing Co. v. Nu-Star, Inc.*, 21 U.S.P.Q.2d 1053 (Fed. Cir. 1991); *see also, In re Geiger*, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987).

The mere fact that the reference cited by the Examiner may be modified does not allow the Examiner to meet his burden of establishing a *prima facie* case of obviousness absent a suggestion in the cited art of the desirability of the modification. The Examiner "...may not use the claimed invention as an instruction manual or template to piece together the teachings of the prior art

so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992).

If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 2-4 are nonobvious.

Applicant respectfully submits that claims 1-5 are allowable over the prior art of record and Applicant respectfully requests the Board to reverse the final rejections and pass this case to issue.

IX. APPENDIX

Claims

What I Claim Is:

1. A composition of matter useful for the treatment of killing microorganisms and human skin diseases, consisting of:

sulfuric acid of 98 percent purity combined in a 1 to 2 volume ratio with distilled water and ammonium sulfate in a ratio of 2.77 lbs. per gallon of H₂O;

combining the mixture under 15 psi pressure in a pressurized vessel above atmospheric pressure and heating the mixture to 900° F for at least 3 hours;

after the mixture is cooled, adding a stabilizer including at least 10 percent of the original mixture.

2. The composition of claim 1, wherein urea is substitute for ammonium sulfate.

3. The composition of claim 1, wherein once the mixture is heated, the mixture is stirred vigorously by air under pressure in said pressurized vessel.

4. The composition of claim 1, wherein the mixture is introduced under pressure into the pressurized vessel by spraying into the vessel.

5. The method of preparing a composition of matter that is useful for the treatment of killing microorganisms and human skin diseases, comprising the steps of:

(a) preparing a sulfuric acid of 98 percent purity in a first container;

(b) heating distilled water in a ratio of twice the volume of said sulfuric acid in a separate container to at least 140° F;

(c) mixing ammonium sulfate in said heated water in a ratio of 2.77 lbs. per gallon of water;

(d) simultaneously combining the mixture of sulfuric acid, heated distilled water, and ammonium sulfate into a separate pressurized vessel by injection;

(e) heating the pressurized mixture to 900° F for at least 3 hours; and

(f) cooling said mixture and adding a stabilizer in said cooled mixture to at least 10 percent of the original mixture, whereby a composition of matter results that is useful for the treatment of killing deleterious microorganisms.

WHEREFORE, Applicant respectfully submits that the instant claims are allowable over the prior art of record and Applicant respectfully requests the Board to reverse the final rejections and pass this case to allowance.

Respectfully submitted,



Barry L. Haley, Reg. No. 25,339
Malin, Haley, DiMaggio & Crosby, P.A.
One East Broward Boulevard
Suite 1609
Fort Lauderdale, Florida 33301
(954) 763-3303

i:\9240\amend\3801.002